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	U·S·DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: REG-8 Transmittal Number: 786 Date: JUN 30 1993

Subject: Oversight of State Regulatory and State and Tribal Abandoned Mine Land Reclamation Programs

Approval: [signature] **Title:** Acting Director

1. PURPOSE. This directive establishes policies, procedures and responsibilities for conducting oversight of State regulatory programs and State and Tribal abandoned mine land reclamation (AMLR) programs. This directive applies to all Office of Surface Mining Reclamation and Enforcement (OSM) organizational units and personnel involved in oversight of State regulatory programs and State and Tribal AMLR programs during Evaluation Year (EY) 1994 (July 1, 1993-June 30, 1994). It does not affect oversight workplans prepared for EY 1994, but it shall be used when preparing workplans for EY 1995.

2. SUMMARY OF CHANGES. Since this directive was last revised on July 8, 1992, the following changes have been made:

a. Dates have been modified throughout the directive and appendix as necessary to reflect the extension of this guidance through the 1994 evaluation year.

b. Part 4.a. of the directive has been revised to clarify that the Director or his or her designee can establish national priority review topics and standardized nationwide element- or subelement-specific evaluation methodologies when desired; they need not be set forth through the directive process.

c. Parts 4.a.(2)(f) and 5.b. of the directive and Part II of the appendix have been revised to delete the requirement for quarterly workplan progress reports since this information is already included in the monthly reports prepared by the Field Office Directors for the Assistant Director, Field Operations.

d. Part 5.c. of the directive has been removed, deleting the requirement that copies of Tables 2 and 6-10 be submitted to the Assistant Director, Reclamation and Regulatory Policy.

e. Part 5.d. (now 5.b.) of the directive has been revised to extend the time allotted to the Field Office Director for preparation of the annual report from 30 days to 45 days after the close of the evaluation year.

f. Part 6 of the directive has been revised to reflect prior changes to Directives INE-29 and REG-8.

g. The appendix to the directive has been modified throughout as necessary to allow Field Office Directors to extend the length of the routine review cycle for any element or subelement to a maximum of 5 years if certain conditions are met.

h. Parts III.A., IV.K.1., and V.C.1. of the appendix have been revised to delete "Maintenance of internal controls" as an independent subelement of the "Program Administration" element since the need for and operation of internal controls is reviewed as part of virtually all other program elements and subelements.

i. Part V. of the appendix has been revised to reflect recent changes to Title IV of the Surface Mining Control and Reclamation Act of 1977 and the implementation of a simplified grants process for the abandoned mine land reclamation program.

j. Part VI.A. of the appendix has been revised to:

(1) Extend the time allotted to the Field Office Director for preparation of the first draft of the annual report from 30 days to 45 days after the close of the evaluation year.

(2) Extend the time allotted to the Assistant Director, Field Operations to review the draft annual report from 15 days to 30 days after receipt.

(3) Extend the time allotted to the State to review the draft annual report from 15 days to 30 days.

(4) Reduce the number of printed copies of the annual report that must be submitted to the Assistant Director, Field Operations from 25 to 15.

k. Appendix A of the format and instructions for the annual report has been revised as follows:

(1) Table 1 and its instructions have been revised to require the use of fee compliance data when reporting coal production. It also now requires production data for sites on which OSM is the regulatory authority.

(2) Table 2 and its instructions have been revised to be consistent in terminology and guidance with Directives INE-21 and INE-23. Also, the instructions now address the classification of reclaimed bond forfeiture sites.

(3) The instructions for Table 3 have been extensively revised and expanded to add specificity, improve clarity and provide greater consistency in the way the information for this table is calculated and reported.

(4) The instructions for Tables 3 and 4 have been revised to clarify that,

consistent with Directive INE-21, undisturbed permits shall be excluded when preparing the entries for these tables.

(5) Tables 6 and 7 and their instructions have been revised to improve clarity and consistency with revised Directive INE-23.

(6) Table 8 has been revised to display compliance findings by performance standard rather than the number of sites in compliance as a whole.

(7) Consistent with revised Directive INE-23, Table 9 and its instructions have been revised to include data from certain OSM oversight inspections in addition to random sample inspections.

(8) The instructions for Table 10 have been revised to reflect the changes to Directive INE-23.

(9) A new Table 11 has been added as a counterpart to Table 10 to show the seriousness of violations identified on OSM oversight inspections other than random sample inspections.

(10) Table 21 (formerly Table 20) and its instructions have been revised to accommodate grant simplification.

(11) Former Table 21 has been eliminated and Table 22 has been extensively revised for clarity and to provide a comparison of accomplishments with reclamation needs as reflected in the abandoned mine land inventory system.

3. DEFINITIONS.

a. Oversight. The process of evaluating and assisting States and Tribes in the administration, implementation and maintenance of approved regulatory and abandoned mine land reclamation programs.

b. State program. A State-administered program, approved by the Secretary under section 503 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State. Where a cooperative agreement governing mining on Federal lands has been approved under section 523 of SMCRA, that agreement is considered part of the State program. For purposes of this directive only, this term also includes State and Tribal AMLR plans approved under section 405 of SMCRA.

4. POLICY/PROCEDURES.

a. Responsibilities.

(1) Director/Deputy Director.

Establish national priority review topics and standardized nationwide evaluation methodologies for specific topics when desired.

(2) Assistant Director, Reclamation and Regulatory Policy (ADRRP).

(a) Develop, clarify and revise national oversight policies, standards and procedures.

(b) Coordinate with other Assistant Directors on oversight issues and activities affecting their areas of expertise and responsibilities.

(3) Assistant Director, Field Operations (ADFO).

(a) Ensure that oversight activities are planned, conducted, monitored and reported in accordance with national policies, procedures and guidance. Develop supplemental standards and procedures as needed in consultation with the AD/RRP.

(b) Consistent with national policy, procedures and standards, provide supplemental guidance to Field Office Directors to address issues arising from implementation of the national guidance. This shall not be construed as authorizing waivers of national requirements.

(c) Analyze the implementation and results of oversight policies, standards and procedures to ensure that the objectives of SMCRA are achieved.

(d) Coordinate with other Assistant Directors on oversight issues and activities affecting their areas of expertise and responsibilities.

(e) Review Field Office oversight workplans and annual evaluation reports to ensure national consistency.

(4) Assistant Directors, Eastern and Western Support Centers (ADSC).

Provide Field Offices with the technical assistance necessary to support oversight activities.

(5) Field Office Directors (FODs).

(a) Plan and conduct oversight activities and prepare related documents and reports in accordance with the appendix to this directive and other national policies and procedures.

(b) Develop day-to-day operational procedures consistent with

national oversight policies.

(c) Request technical and other assistance from the ADSC when necessary to properly conduct oversight activities.

(d) Interact on a routine, periodic basis with special interest groups, such as State and local coal associations and citizen and environmental organizations, to determine their areas of concern.

(e) Prepare and present a briefing for the Director on the annual evaluation report and conditions within the State or Tribe.

b. Procedures. Oversight activities shall be planned, conducted and reported in accordance with this directive, its appendix and all other relevant directives and supplemental guidance.

5. REPORTING REQUIREMENTS.

Each FOD shall submit:

a. For each State or Tribe within his or her area of responsibility, an annual oversight workplan, including a cyclical program element review schedule and detailed evaluation plan for selected program elements and subelements, to the ADFO 45 days before the start of each evaluation year.

b. An annual evaluation report for each State or Tribe within his or her area of responsibility to the ADFO within 45 days of the close of the evaluation year.

6. EFFECT ON OTHER DOCUMENTS.

With respect to oversight activities conducted during EY 1994, supersedes Directive REG-8, "Oversight of State Regulatory Programs and State and Tribal Abandoned Mine Land Reclamation Programs," Transmittal Number 693, dated November 12, 1991; Change Notice REG-8-1, Transmittal Number 722, dated May 14, 1992; and Change Notice REG-8-2, Transmittal Number 731, dated July 8, 1992.

7. REFERENCES.

a. Directive INF-1, "Policy and Procedural Guidelines for OSM Records Management Systems."

b. Directive REG-23, "Development and Implementation of Action Plans."

8. EFFECTIVE DATE: Upon issuance.

9. CONTACT: Chief, Division of Regulatory Programs; (202) 208-2651.

10. KEYWORDS: State program, evaluation, annual report, workplan, oversight, cyclical review schedule, program element.

11. APPENDIX.

"Procedures and Criteria for the Evaluation of State Regulatory Programs and State and Tribal Abandoned Mine Land Reclamation Programs under the Surface Mining Control and Reclamation Act of 1977."

Appendix

PROCEDURES and CRITERIA

for the EVALUATION of

STATE REGULATORY PROGRAMS

and STATE AND TRIBAL ABANDONED

MINE LAND RECLAMATION PROGRAMS

under the Surface Mining Control

and Reclamation Act

of 1977

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I. Background and Purpose

The Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) requires the development and implementation of programs to regulate surface coal mining and reclamation operations and reclaim lands damaged by mining activities prior to SMCRA. SMCRA encourages States to assume the primary responsibility for regulating mining activities (primacy) and authorizes those States with primacy to submit and gain approval of abandoned mine land reclamation (AMLR) plans and receive full Federal funding of activities conducted pursuant to those plans. In addition, Congress amended SMCRA in 1987 to authorize the Navajo, Hopi and Crow Tribes to submit and gain approval of AMLR programs.

Section 201 of SMCRA established the Office of Surface Mining Reclamation and Enforcement (OSM) to administer and implement the Act. Among its responsibilities, the agency is charged with promoting the achievement of program goals and objectives, ensuring adherence to Federal and State statutory and regulatory requirements and maintaining minimum nationwide mining and reclamation standards.

This document furthers these purposes by establishing procedures and general criteria for the evaluation of regulatory and AMLR programs approved under SMCRA. In addition, this document:

- Defines the elements of regulatory and AMLR programs subject to oversight;
- Defines the respective roles and responsibilities of OSM and the States and Tribes in carrying out regulatory and AMLR programs; and
- Establishes the format for OSM's annual report to Congress on the status of program administration by the States and Tribes.

II. Procedures

A. General Approach

Oversight shall be conducted as an ongoing process involving continuous evaluation of State and Tribal performance throughout the year. Such a process involves frequent analysis of random sample inspection findings and program data, grant reports and other documents routinely supplied to the Field Office by the State or Tribe. It also includes inspections and monitoring activities conducted pursuant to Directives AML-11 ("Guidance for Site Evaluation Visits of State Abandoned Mine Land Projects"), INE-28 ("State Bond Release Oversight Inspections") and REG-5 ("Processing of Proposed State Regulatory Programs, Amendments and Part 732 Notifications"). Emphasis shall be placed on prevention, detection and prompt correction of problems. A high level of both formal and informal communication with the State or Tribe concerning oversight activities and findings shall be maintained throughout the evaluation year.

All program elements and subelements, as listed and discussed in Parts III through V of this document, must be thoroughly reviewed once every 3 years. Unless otherwise provided by national direction, more frequent reviews of a detail in excess of that required in the previous paragraph may be scheduled only when problems have been previously identified (in which case, in-depth annual reviews are mandatory until resolution is verified) or if needed to determine the existence, nature or extent of suspected problems identified through random sample inspections, routine AML site visits, public concerns, or analysis of data and documents routinely supplied by the State or Tribe.

Use of a 3-year review cycle means that, when an element or subelement is targeted for a routine in-depth review (evaluation code 2), the sample evaluated must include pertinent documents and activities from the preceding 3 years. However, the sample selection process may be skewed toward more recent actions, provided evaluation of earlier actions is not eliminated or reduced to token proportions. Regardless of the means by which the sample is selected, conclusions shall accord greater weight to more recent actions and all reports shall place earlier actions in proper context.

The Field Office Director (FOD) may extend the length of the routine review cycle for any element or subelement to a maximum of 5 years if:

(1) There is no recent history of significant implementation problems associated with that element or subelement;

(2) Minimal or no State, Tribal or industry activity (or need for such activity) associated with the element or subelement is anticipated for the foreseeable future;

(3) There is little likelihood of significant environmental harm, public health or safety problems, or substantial abuse of Federal funds even if performance deficiencies develop between reviews; or

(4) State or Tribal self-reporting mechanisms and/or OSM data collection and monitoring systems enable the Field Office to continuously monitor State or Tribal actions pertinent to the element or subelement in question.

B. Data Collection and Analysis

Data and documents routinely supplied to OSM by the State or Tribe shall be analyzed on a reasonably continuous basis to identify any trends concerning program administration and implementation. Similarly, data collected on random sample and other routine regulatory inspections and AML site visits shall be analyzed frequently (at least quarterly) to identify any trends in State performance.

Isolated deficiencies shall not be considered a trend unless they are part of an overall pattern of mistakes and omissions indicative of a lack of adequate internal controls. However, to

avert the development of significant problems, the Field Office shall discuss any irregularities or incipient trends with the State or Tribe promptly following their observation. Detection of isolated deficiencies may also provide a basis for a more in-depth review of the program area in question to determine whether a significant problem exists.

Establishment of State internal control systems and joint OSM-State databases maintained by the State is strongly encouraged to maximize consistency, minimize duplicative efforts and reduce the need for document reviews, although Field Office verification and validation of State data will still be necessary. All reviews of files, documents or other information located at a State office shall be conducted in a manner that minimizes disruption of State operations.

To the extent practical, the sites selected for random sample inspections shall constitute the sample used by OSM for both data validation and evaluation of all regulatory program elements. That is, for those elements and subelements scheduled for evaluation during the year, all relevant documents (permitting actions, enforcement activity, civil penalties, bond releases, etc.) pertaining to a site since the last evaluation of the element or subelement in question shall be reviewed as part of the random sample inspection and checked with the data for that site entered in the State database. When this method is not feasible, as would be the case with program elements such as blaster certification, lands unsuitable designations, small operator assistance, program amendments and program administration, or when the random sample inspection population fails to include a sample size adequate to evaluate a particular subelement, such as pattern of violations reviews or alternative enforcement actions, additional special-purpose inspections and/or file reviews shall be conducted.

C. Problem Resolution

Problems shall be resolved as expeditiously as possible in accordance with the procedures described in Directive REG-23. Implementation problems, action plans and other program matters shall be discussed with the State or Tribe at regularly scheduled meetings of Field Office and State or Tribal personnel. The FOD shall provide the State or Tribe with the opportunity to meet at the agency head or other supervisory level at least quarterly. An agenda letter shall be formulated and sent to the State or Tribe at least one week in advance of each scheduled quarterly meeting. The letter shall outline the specific topics to be discussed and shall solicit additional topics from the State or Tribe. Minutes of each meeting shall be kept and sent to the State or Tribe in draft form for comment before being finalized and filed.

D. Workplans

1. Regulatory and AMLR Program Elements

As part of the planning phase of oversight, each FOD shall develop a workplan for overseeing each State or Tribal program within his or her jurisdiction. This workplan shall consist of (1) a schedule, prepared at 3-year intervals, indicating when the program elements and

subelements listed in Part III of this document will be reviewed during the standard evaluation cycle, and (2) a detailed evaluation plan, prepared annually, for each program element and subelement scheduled to be examined in depth (evaluation codes 2-4) during the upcoming evaluation year. When developing this workplan, the FOD shall accord priority to all continuing or tentatively resolved problems and issues from previous evaluation years and any concerns identified by interest groups, individual citizens, or environmental organizations pursuant to the survey and interaction required by Section 4.a.(4)(d) of Directive REG-8.

Any specialized technical review topics, such as prime farmland reclamation, cultural resources protection and management, the effectiveness of hydrologic reclamation plans, actual versus predicted performance of topsoil substitutes, and the permitting/construction/stability of excess spoil disposal structures, shall be added to the workplan as separate program elements if they involve aspects of several different standard elements. Otherwise, they shall be listed as separate subelements of the appropriate elements.

The detailed annual evaluation plan must define the scope of the evaluation, describe the evaluation methodology, specify the period for which State or Tribal actions will be reviewed, estimate the size of the population, and explain the sample selection process, including the sample size. Detailed evaluation plans for technical review topics shall be developed in consultation with the Assistant Director of the appropriate Support Center (ADSC). The extent to which elements and subelements are reviewed shall be determined by the resources available to the Field Office; national priorities; the significance of the element or subelement with respect to protection of property, public health and safety and the environment; interest group concerns; and the extent to which there are indications that a deficiency may exist. Every element and subelement need not be evaluated in identical detail, although no program requirement may be completely passed over.

To the extent practical, both parts of the workplan shall be prepared in cooperation with the State or Tribe. At a minimum, the State or Tribe shall be allowed a 20-day comment period on the draft plan before it is forwarded to the Assistant Director for Field Operations (ADFO).

Proposed workplans shall be prepared in accordance with the format and instructions set forth in Part III of this document. They must be submitted to the Assistant Director for Field Operations (ADFO), with a copy of any State or Tribal comments attached, for review 45 days prior to the start of each evaluation year. Within 30 days of receipt of the plan, the ADFO shall either approve it or return it for revision. The FOD shall promptly provide a copy of the approved plan to the State or Tribe.

As additional issues and concerns develop during the year, the workplan shall be modified to address them. Resolution shall not be delayed until the succeeding evaluation year. Workplan modifications may also be necessary because of changes in State or Federal resources or priorities. Copies of any such revisions shall be provided to the ADFO for

informational purposes or, in the case of proposed new review topics, approval.

2. Purposes of SMCRA

The workplan developed in the preceding section must include an explanation of the success of the State regulatory and AMLR programs in achieving reclamation of mined lands and the other purposes of SMCRA related to the protection of property, public health and safety and the environment. This evaluation is not a measure of compliance with approved program requirements. Instead, with respect to reclamation success, it is a comparison of premining conditions with postmining conditions without regard to whether individual regulatory requirements have been met. While the State and Federal regulations implementing SMCRA are intended to ensure that the purposes of the Act are met, there is no guarantee that they are either necessary or adequate to do so.
The Field Office shall discuss evaluation techniques with the State and endeavor to develop a cooperative approach to data collection and reporting.

Some of this information can be collected on routine State and/or Federal inspections, entered in databases and/or reported in inspection report narratives. Other data needs may necessitate additional in-depth studies and special-purpose Federal inspections (especially of bond release sites). Data already being collected by the State or other Federal agencies for other purposes should also be examined for relevance. Not every aspect of reclamation success need be evaluated each year. Intensive studies of selected topics are preferable to broad but superficial reviews and observations.

In evaluating the success of State regulatory programs in achieving reclamation of mined lands, emphasis shall be placed on determining whether surface coal mining operations are:

- Being conducted so as to protect the environment, public health and safety, and property rights (including water rights);
- Reclaiming lands contemporaneously with mining;
- Not being conducted where reclamation is not feasible; i.e., land is being reclaimed to a condition capable of supporting the uses which it supported prior to mining; and
- Assisting in the reclamation of previously mined areas left without adequate reclamation.

To the maximum extent possible, this evaluation shall be quantitative in nature. Relevant data include, but are not limited to:

- Annual summaries of acreage disturbed and reclaimed (by reclamation phase) relative to the total area permitted;

- o Measurements of revegetation success (species composition, cover and productivity);

- o Results of bond release inspections;

- o Comparison of premining hydrologic baseline data with postmining monitoring data, results of U.S. Geological Survey watershed monitoring programs or other long-term evaluations of the effects of mining on surface and groundwater hydrology;

- o Conclusions resulting from technical investigations, reviews of technical topics and evaluations of experimental practices;

- o Amount and degree of offsite damage resulting from mining; e.g., subsidence, siltation of wetlands, and loss or degradation of water supplies or streams;

- o Amount and degree of irreparable onsite damage resulting from mining; e.g., loss or contamination of topsoil, groundwater contamination from improper overburden handling or drilling practices, and destruction of calcareous or riparian wetlands;

- o Acreage of previously mined lands remined and the effects of such remining; and

- o Effects of innovative mining and reclamation techniques.

E. Element- and Subelement-Specific Evaluation Reports

Whenever the Field Office completes its evaluation of a program element or subelement scheduled for in-depth review (evaluation codes 2-4), the FOD shall prepare a detailed evaluation report independent of the annual evaluation report. This report shall contain the following items:

- o The program element, subelement or technical topic reviewed.

- o The scope and method of review.

- o The dates of the oversight activity and the period for which State or Tribal actions and documents were evaluated.

- o All findings, both positive and negative.

- o Facts supporting the findings.

- o A list of all specific permits, minesites, AMLR project sites or State or Tribal actions reviewed.

- o The actual or potential impact or significance of any deficiencies identified.

- o A clear description of any corrective action required or recommended, if problems or potential problems are identified.

- o If appropriate, an offer of technical or administrative assistance.

Records shall be maintained of all OSM personnel involved in the review and all State or Tribal personnel contacted. When OSM personnel outside the Field Office have participated in the review, they shall be afforded an opportunity to review and comment on the report in draft form.

Upon finalization, the report shall be sent to the State or Tribe with a request for comments and, if appropriate, a schedule of actions to be taken to address any issues or resolve any problems.

F. Evaluation Files

The Field Office shall maintain a public review file for each evaluation year on an ongoing basis in accordance with Directive INF-1. This file shall be maintained independent of the administrative record. It shall be kept current and include all documents pertinent to the evaluation year in question regardless of the date of preparation or receipt. In some cases, such as a multiyear action plan, this may require that a document be duplicated and placed in several files (one for each year to which the document pertains). The file for each evaluation year must contain the following items:

- o National oversight guidance and format documents and revisions and clarifications thereof.

- o The annual workplan and cyclical review schedule and any subsequent revisions.

- o A list of the inspectable units selected for random sample inspections, including the type of facility and its activity status, and a similar list of AMLR project sites visited, including the type of project and its construction status.

- o All element- and subelement-specific evaluation reports prepared for the evaluation year.

- o Any data summaries used to prepare the findings in the annual evaluation report.

- o Action plans developed or in effect during the evaluation year.
- o Action plan status reports.
- o OSM-State meeting minutes and substantive correspondence concerning evaluation techniques, topics, schedules and findings.
- o The annual evaluation report (both the version initially provided to the State or Tribe and the final version) and all State or Tribal comments thereon.
- o Public comments, complaints or observations pertaining to the annual evaluation report or the evaluation process.

The evaluation file shall not include the following items:

- o Working papers.
- o State or Federal inspection reports or AML site visit reports.
- o Raw, unorganized data.
- o Confidential permit application documents or other confidential information.
- o Grant reports and related documents (although the file should include a note explaining where and how these documents may be reviewed).
- o Briefing papers.

Evaluation files shall be available for public review during normal business hours in the same manner as the administrative record files (see Directive INF-2). Single copies of the annual evaluation report and element- or subelement-specific reports shall be provided free of charge upon request. Requests for copies of other evaluation file documents may be processed in accordance with Directive INF-3 (Freedom of Information Act procedures) if the Field Office Director determines that the request imposes a significant burden on Field Office resources.

III. Workplan Formats

Note: The ADFO may alter the format of these forms to request additional information and meet other needs, provided no informational requirements or categories are deleted.

A. Cyclical Review Schedule

The FOD shall complete this form at 3-year intervals, entering the appropriate evaluation code for each program subelement. If a specific element or subelement is not applicable within a particular State, provide a footnote explaining why this is the case.

When the FOD believes the standard continuous oversight requirements of the first paragraph of Part II.A. of this document are equivalent to the detailed cyclical review requirements of Part II.D., he or she shall attach an explanatory paragraph to this review schedule identifying which subelements fall into this category and why.

Add specialized technical review topics at the end of the regulatory or AMLR program listings as separate elements or subelements when such topics are not merely a subset of a larger, overall review of existing subelements. Include a parenthetical note after each one stating "technical topic--cyclical review not required".

When the FOD extends the review cycle for an element or subelement beyond 3 years, he or she shall add an appendix to the schedule listing those elements and subelements with an extended review cycle. This appendix shall identify the length of the new cycle (either 4 or 5 years) and the reason for the extension.

[State/Tribe]

CYCLICAL REVIEW SCHEDULE

Evaluation Years 1995-1997

Regulatory Program Evaluation Codes

0 - No evaluation planned

1 - Standard continuous oversight (random sample and bond release inspections and/or review of State data and documents routinely supplied to the Field Office)

2 - Routine cyclical in-depth review

3 - Selective-focus evaluation resulting from:

(a) Inspection findings

(b) Analysis of State data and documents routinely supplied to the Field Office

(c) Public concern

(d) Action plan item or other previously identified unresolved problem

(e) Action plan follow-up (verification of tentative resolutions)

4 - National priority review

AMLR Program Evaluation Codes

0 - No evaluation planned

1- Standard continuous oversight (routine site visits and/or review of State or Tribal data and documents routinely supplied to the Field Office)

2 - Routine cyclical in-depth review

3 - Selective-focus evaluation resulting from:

(a) Site visit findings

(b) Analysis of State or Tribal data and documents routinely supplied to the Field Office

(c) Public concern

(d) Action plan item or other previously identified unresolved problem

(e) Action plan follow-up (verification of tentative resolutions)

4 - National priority review

CYCLICAL REVIEW SCHEDULE

REGULATORY PROGRAM

Elements and subelements	Type of evaluation				
	EY 1995	EY 1996	EY 1997	EY 1998	EY 1999
A. Permitting Actions					
1. Processing of new mining permit applications					
a. Administrative completeness	–	–	–	–	–
b. Public notice, availability for public review, consideration of comments and notice of decision	–	–	–	–	–
c. Coordination with other permitting authorities and solicitation and consideration of comments from other governmental agencies	–	–	–	–	–
d. Completeness and accuracy of data concerning ownership, compliance history, right of entry, and protected lands and structures	–	–	–	–	–
e. Adequacy of baseline data	–	–	–	–	–
f. Mining and reclamation plan	–	–	–	–	–
g. Subsidence control plan	–	–	–	–	–
h. PHC/CHIA	–	–	–	–	–
i. Liability insurance	–	–	–	–	–
j. Written findings and documentation	–	–	–	–	–
k. Permit terms and conditions	–	–	–	–	–
l. AVS operation, maintenance, and use	–	–	–	–	–
2. Processing of exploration applications					
a. Application completeness	–	–	–	–	–
b. Public notice and consideration of comments	–	–	–	–	–
c. Justification for sale or commercial use	–	–	–	–	–
d. Written findings and documentation	–	–	–	–	–
3. Processing of notices of intent to explore	–	–	–	–	–
4. Processing of applications for permit revisions, transfers, assignments, and sales					
a. Determination of significance (revision applications only)	–	–	–	–	–

0 - No evaluation planned
1 - Standard continuous oversight (random sample and bond release inspections and/or review of State data and documents routinely supplied to the Field Office)
2 - Routine cyclical in-depth review
3 - Selective-focus evaluation resulting from:
(a) Inspection findings
(b) Analysis of State data and documents routinely supplied to the Field Office
(c) Public concern
(d) Action plan item or other previously identified unresolved problem
(e) Action plan follow-up (verification of tentative resolutions)
4 - National priority review

CYCLICAL REVIEW SCHEDULE

REGULATORY PROGRAM

Elements and subelements	Type of evaluation				
	EY 1995	EY 1996	EY 1997	ET 1998	EY 1999
b. Public notice (if applicable) and consideration of comments	–	–	–	–	–
c. PHC/CHIA reevaluation (revision applications only)	–	–	–	–	–
d. Written findings and documentation	–	–	–	–	–
5. Processing of permit renewal applications					
a. Completeness	–	–	–	–	–
b. Public notice and consideration of comments	–	–	–	–	–
6. Midterm permit reviews	–	–	–	–	–
7. Periodic reviews of permits for special types of mining	–	–	–	–	–
8. Remediation of improvidently issued permits	–	–	–	–	–
B. Bonding					
1. Bond instrument tracking and security systems	–	–	–	–	–
2. Computation and adequacy of bond amounts	–	–	–	–	–
3. Verification of bond instrument validity, value and lack of restrictions	–	–	–	–	–
4. Alternative bonding system operation and solvency	–	–	–	–	–
5. Bond adjustments and replacements	–	–	–	–	–
6. Processing of bond release applications					
a. Public notice, notification of interested parties and consideration of comments	–	–	–	–	–
b. Evaluation of adequacy of proposed remaining bond (partial releases only)	–	–	–	–	–
c. Documentation that bond release standards have been met	–	–	–	–	–
7. Bond forfeiture					
a. Procedures	–	–	–	–	–
b. Collection and litigation efforts	–	–	–	–	–
c. Reclamation of forfeiture sites	–	–	–	–	–

0 - No evaluation planned
1 - Standard continuous oversight (random sample and bond release inspections and/or review of State data and documents routinely supplied to the Field Office)
2 - Routine cyclical in-depth review
3 - Selective-focus evaluation resulting from:
(a) Inspection findings
(b) Analysis of State data and documents routinely supplied to the Field Office
(c) Public concern
(d) Action plan item or other previously identified unresolved problem
(e) Action plan follow-up (verification of tentative resolutions)
4 - National priority review

CYCLICAL REVIEW SCHEDULE

REGULATORY PROGRAM

Elements and subelements	Type of evaluation				
	EY 1995	EY 1996	EY 1997	EY 1998	EY 1999
C. Inspections					
1. Inspection frequency and procedures	–	–	–	–	–
2. Inspection reports					
a. Accuracy and completeness	–	–	–	–	–
b. Documentation of violations, site conditions and mine activity status	–	–	–	–	–
3. Maintenance of inspectable units list and inspection database	–	–	–	–	–
4. Handling of citizen complaints and requests for inspections	–	–	–	–	–
D. Enforcement					
1. Identification and citation of violations	–	–	–	–	–
2. Notices of violations and cessation orders					
a. Timeliness of issuance and termination	–	–	–	–	–
b. Appropriateness of remedial measures and abatement periods	–	–	–	–	–
c. Documentation of reasons for modifications, terminations and vacations	–	–	–	–	–
3. Pattern of violations reviews, show cause orders and hearings	–	–	–	–	–
4. Timeliness and effectiveness of alternative enforcement actions	–	–	–	–	–
5. Responses to ten-day notices	–	–	–	–	–
E. Civil Penalties					
1. Penalty assessment procedures	–	–	–	–	–
2. Documentation of rationale for penalty assessment amounts, waivers and adjustments	–	–	–	–	–
3. Maintenance of enforcement value					
a. Blocking of new permits if penalties unpaid	–	–	–	–	–
b. Collection efforts	–	–	–	–	–

0 - No evaluation planned
1 - Standard continuous oversight (random sample and bond release inspections and/or review of State data and documents routinely supplied to the Field Office)
2 - Routine cyclical in-depth review
3 - Selective-focus evaluation resulting from:
(a) Inspection findings
(b) Analysis of State data and documents routinely supplied to the Field Office
(c) Public concern
(d) Action plan item or other previously identified unresolved problem
(e) Action plan follow-up (verification of tentative resolutions)
4 - National priority review

CYCLICAL REVIEW SCHEDULE

REGULATORY PROGRAM

Elements and subelements	Type of evaluation				
	EY 1995	EY 1996	EY 1997	EY 1998	EY 1999
F. Administrative and Judicial Review					
1. Review procedures					
a. Notification of rights	–	–	–	–	–
b. Escrowing of penalties	–	–	–	–	–
c. Timeliness of hearings and decisions	–	–	–	–	–
d. Documentation of decision rationale	–	–	–	–	–
2. Appeal or remediation of adverse decisions	–	–	–	–	–
3. Cost recovery procedures and decisions	–	–	–	–	–
G. Designation of Lands Unsuitable for Mining					
1. Processing of petitions	–	–	–	–	–
2. Maintenance of database and inventory system	–	–	–	–	–
H. Blaster Certification					
1.Training	–	–	–	–	–
2. Certification	–	–	–	–	–
3. Suspension and revocation	–	–	–	–	–
I. Small Operator Assistance					
1. Application review and verification of eligibility	–	–	–	–	–
2. Contract monitoring	–	–	–	–	–
3. Reimbursement monitoring and procedures	–	–	–	–	–
4. Laboratory certification	–	–	–	–	–
J. Maintenance of Approved Program					
1. Notification to OSM of program changes and significant conditions and events affecting implementation	–	–	–	–	–
2. Responses to Part 732 notifications and codified conditions and amendment requirements	–	–	–	–	–
3. Promulgation and implementation of approved program amendments	–	–	–	–	–

0 - No evaluation planned
1 - Standard continuous oversight (random sample and bond release inspections and/or review of State data and documents routinely supplied to the Field Office)
2 - Routine cyclical in-depth review
3 - Selective-focus evaluation resulting from:
(a) Inspection findings
(b) Analysis of State data and documents routinely supplied to the Field Office
(c) Public concern
(d) Action plan item or other previously identified unresolved problem
(e) Action plan follow-up (verification of tentative resolutions)
4 - National priority review

CYCLICAL REVIEW SCHEDULE

REGULATORY PROGRAM

Elements and subelements	Type of evaluation				
	EY 1995	EY 1996	EY 1997	EY 1998	EY 1999
K. Program administration					
1. Grants management					
a. Drawdowns and disbursements	–	–	–	–	–
b. Accounting procedures	–	–	–	–	–
c. Timeliness of applications and reports	–	–	–	–	–
d. Audits and implementation of audit recommendations	–	–	–	–	–
e. Procurement and management of property and services	–	–	–	–	–
2. Data management	–	–	–	–	–
3. Coordination with other agencies	–	–	–	–	–
4. Identification and resolution of conflicts of interest	–	–	–	–	–

0 - No evaluation planned
1 - Standard continuous oversight (random sample and bond release inspections and/or review of State data and documents routinely supplied to the Field Office)
2 - Routine cyclical in-depth review
3 - Selective-focus evaluation resulting from:
(a) Inspection findings
(b) Analysis of State data and documents routinely supplied to the Field Office
(c) Public concern
(d) Action plan item or other previously identified unresolved problem
(e) Action plan follow-up (verification of tentative resolutions)
4 - National priority review

CYCLICAL REVIEW SCHEDULE

ABANDONED MINE LAND RECLAMATION PROGRAM

Elements and subelements	Type of evaluation				
	EY 1995	EY 1996	EY 1997	EY 1998	EY 1999
A. Project Planning					
1. Inventory maintenance	–	–	–	–	–
2. Project selection	–	–	–	–	–
3. Interagency coordination	–	–	–	–	–
4. Project design	–	–	–	–	–
5. Rights of entry	–	–	–	–	–
6. Lien eligibility determinations	–	–	–	–	–
B. Project Construction					
1. Adequacy of contract terms and specifications	–	–	–	–	–
2. Construction management	–	–	–	–	–
3. Post-construction monitoring and evaluation	–	–	–	–	–
4. Project maintenance	–	–	–	–	–
5. Lien recording and maintenance	–	–	–	–	–
6. Emergency investigations and abatement efforts	–	–	–	–	–
C. Program Administration					
1. Grants management					
a. Drawdowns and disbursements	–	–	–	–	–
b. Accounting procedures	–	–	–	–	–
c. Timeliness of applications and reports	–	–	–	–	–
d. Audits and implementation of audit recommendations	–	–	–	–	–
e. Procurement and management of property and services	–	–	–	–	–
2. Data management	–	–	–	–	–
3. Coordination with other agencies	–	–	–	–	–
4. Management and disposal of abandoned mine lands	–	–	–	–	–
5. Subsidence insurance program management	–	–	–	–	–

0 - No evaluation planned
1 - Standard continuous oversight (random sample and bond release inspections and/or review of State data and documents routinely supplied to the Field Office)
2 - Routine cyclical in-depth review
3 - Selective-focus evaluation resulting from:
(a) Inspection findings
(b) Analysis of State data and documents routinely supplied to the Field Office
(c) Public concern
(d) Action plan item or other previously identified unresolved problem
(e) Action plan follow-up (verification of tentative resolutions)
4 - National priority review

CYCLICAL REVIEW SCHEDULE

ABANDONED MINE LAND RECLAMATION PROGRAM

Elements and subelements	Type of evaluation				
	EY 1995	EY 1996	EY 1997	EY 1998	EY 1999
D. Maintenance of Approved Reclamation Plan					
1. Notification to OSM of significant conditions and events affecting plan implementation	–	–	–	–	–
2. Responses to OSM notifications that plan amendments are needed	–	–	–	–	–
3. Promulgation and implementation of approved plan amendments	–	–	–	–	–

0 - No evaluation planned
1 - Standard continuous oversight (random sample and bond release inspections and/or review of State data and documents routinely supplied to the Field Office)
2 - Routine cyclical in-depth review
3 - Selective-focus evaluation resulting from:
(a) Inspection findings
(b) Analysis of State data and documents routinely supplied to the Field Office
(c) Public concern
(d) Action plan item or other previously identified unresolved problem
(e) Action plan follow-up (verification of tentative resolutions)
4 - National priority review

B. Detailed Evaluation Plan

The FOD shall complete one of these forms for each program element and subelement to be evaluated in greater detail during EY 1994 than would occur under the standard continuous oversight requirements of the first paragraph of Part II.A. of this document. When appropriate, closely related subelements may be combined on a single form, provided all are identified in the heading. In addition, a form shall be prepared explaining how reclamation success and achievement of the other purposes of SMCRA will be evaluated.

Do not complete this form for any elements or subelements to be evaluated only through the standard continuous oversight process; i.e., those subelements with evaluation code 1.

When discussing the review scope for selective-focus evaluations (those subelements with evaluation code 3), clearly identify which aspects of the subelement in question are to be reviewed.

[State/Tribe]

DETAILED EVALUATION PLAN

Evaluation Year 1995

[Regulatory/AMLR] program element:

Subelement:

Population size:

Sample size:

Basis for review: [Check all that apply.]

___ Routine cyclical in-depth review
___ Inspection or site visit findings
___ Analysis of State or Tribal data or documents routinely supplied to the Field Office
___ Public concern
___ Action plan item or other previously identified unresolved problem
___ Action plan followup (to verify implementation of tentative resolutions)
___ National priority
___ Other [specify]

Review scope and methodology:

Projected completion date:

Assistance requested from ADSC:

IV. Regulatory Program Elements and Evaluation Guidance

This section lists the regulatory program elements subject to oversight. It also includes general criteria for use in evaluating each element. The specific standards and criteria used to evaluate State performance shall be those set forth in the approved State regulatory program, as supplemented by this section.

In addition, the following directives provide substantive supplemental oversight guidance applicable to specific regulatory program topics or activities:

Number	Title
GMT-10	Federal Assistance Manual
INE-26	Approximate Original Contour
INE-28	State Bond Release Oversight Inspections
INE-32	Oversight Procedures for State Use of the Applicant Violator System
REG-5	Processing of Proposed State Regulatory Programs, Amendments and Part 732 Notifications
REG-11	Coordination of Permitting Activities with the Mine Safety and Health Administration
REG-13	Oversight of "More Stringent" Provisions of Approved State Programs
REG-19	Incidental Boundary Revisions
REG-27	Water Replacement
REG-29	Permit Revisions Following Regulatory Program Modifications
TSR-1	Handbook for Calculation of Reclamation Bond Amounts
TSR-2	Quarterly Examination of Water Impoundments
TSR-3	Sediment Control Using Best Technology Currently Available
TSR-5	Alternative Postmining Land Use Requirements for Real Property

TSR-6	Drainage Control on Valley and Durable Rock Fills
TSR-8	Transportation and Handling of Abandoned Coal Mine Refuse Piles
TSR-9	Construction Certification of Siltation Structures
TSR-10	Use of Wetland Treatment Systems for Coal Mine Drainage

A. Permitting Actions

SMCRA requires that persons desiring to conduct surface coal mining and reclamation operations and certain coal exploration activities first obtain permits to do so. The permit application must contain information adequate to enable the regulatory authority to evaluate the operator's ability to comply with all program requirements. Complete and accurate permit applications detail how surface coal mining will be conducted to protect the environment. Proper planning of the mining activity is essential to ensure that reclamation is conducted as contemporaneously as possible with coal extraction. Permit applications are subject to public notice procedures and must contain adequate information describing applicants and operators and their compliance history, ownership of surface and mineral rights, and the locations of protected lands and structures to enable the regulatory authority to protect the rights of surface landowners and other persons with a legal interest in the affected lands. Proper permit application review, including adequate technical analyses and documented findings by the regulatory authority, is critical to protection of the public from the adverse effects of mining operations.

Approved State permits shall be reviewed on an ongoing basis by OSM reclamation specialists in preparation for random sample inspections. Technical evaluation topics shall be selected on the basis of inspection findings, concerns of outside interest groups, citizen complaints, or other indicators of actual or potential environmental problems or failure to adhere to public participation requirements. In addition, the Field Office shall evaluate permitting decisions, procedures and related actions on a cyclical basis to ensure compliance with the State program. Permits and related documents selected for review shall include only those issued or modified since the last in-depth review of the subject area. To the extent possible, the sample selected shall coincide with that chosen to meet random sample inspection requirements.

Review of any subelement or technical topic shall include evaluation of the data submitted by the permit applicant; the regulatory authority's analytical techniques, assumptions and conclusions; and the documentation for the findings upon which application approval was based. When on-site evaluations are deemed necessary, they shall be coordinated with random sample inspections to the maximum extent possible. Permit renewals, modifications, midterm reviews, revisions, transfers, sales and assignments of rights shall be reviewed if pertinent to the topic selected. Reviewers shall accord discretion to alternative technical approaches selected or approved by the State and shall not mandate the use of any particular analytical or reclamation technique. Each State is free to choose professionally acceptable design criteria and methods that result in adequate reclamation in accordance with the State program. However, OSM reviewers may recommend changes in techniques if the review indicates that their application could result in potential problems. Changes shall be recommended if actual problems are identified.

Evaluation and oversight of permitting activities shall be based on the State's adherence to its approved program (including any cooperative agreement for State regulation of mining on

Federal lands), with emphasis on the criteria listed below. In addition, Directive INE-32 provides specific guidance on procedures for overseeing State use of the applicant/violator system.

General evaluation criteria

1. Issuance of permits that meet all requirements of the regulatory program, as evidenced by approved permit applications that:

   a. Are administratively complete.

   b. Contain complete and accurate information describing the permittee and operator and their ownership, control and compliance histories; right of entry; ownership of adjacent lands, and the nature and location of protected lands, structures and facilities in the permit and adjacent areas.

   c. Contain accurate baseline hydrologic, geologic, biological and other information concerning the site and adjacent areas in sufficient detail to assess the impacts of mining on the environment.

   d. Contain mining and reclamation plans (and, for underground operations, subsidence control plans) in the detail necessary to demonstrate that reclamation can be accomplished in accordance with program requirements, together with all pertinent plan and design certifications.

   e. Contain a determination of the probable hydrologic consequences of mining accompanied by the regulatory authority's assessment of the probable cumulative hydrologic impacts of all anticipated mining in the area.

   f. Include documentation that an adequate public liability insurance policy was in force prior to permit issuance.

   g. Are accompanied by the written findings required of the regulatory authority by the program and documentation of the basis for these findings.

   h. Are accompanied by all terms and conditions required by the program and any necessary site-specific conditions.

2. Processing of applications for permits, revisions, renewals, transfers, sales and assignments of rights in accordance with program requirements.

3. Processing of applications for coal exploration and notices of intent to explore in accordance with program requirements, including documentation of the need for any proposed sale or commercial use of the coal removed.

4. Adherence to public notice, application availability, information confidentiality, public participation and decision notification requirements, including documented good-faith consideration of all comments and testimony received.

5. Coordination of application review and permit issuance with other local, State and Federal agencies with permitting or licensing authority or other jurisdiction over the proposed operation under Federal or State laws, as evidenced by:

   a. Solicitation of comments from local governments and related agencies, utilities, the State Historic Preservation Officer and other interested State and Federal agencies in accordance with program requirements.

   b. Documented good-faith consideration of all comments received.

   c. Obtaining the concurrence of the Mine Safety and Health Administration before approving any proposed waste disposal in, discharge to, or surface mining activity within 500 feet of, an underground mine.

6. Maintenance of permit adequacy, as evidenced by timely midterm reviews of all permits and timely periodic reviews of permits for experimental practices, mountaintop removal mining, approximate original contour deviations, and combined surface and underground mining operations, with revisions required as necessary for the permit to remain in compliance with all program requirements.

7. Use and maintenance of the applicant/violator system (AVS) in accordance with any pertinent OSM-State memorandum of understanding to ensure that permits are not issued to persons responsible for unabated violations or to persons owning or controlling or owned or controlled by such persons, as evidenced by:

   a. Routine, timely entry of all appropriate data concerning bond forfeitures into the AVS.

   b. Timely performance of both administrative and technical completeness reviews of permit applications, with adequate documentation of the identity of the entity that will extract the coal and the accuracy and completeness of ownership and control information for permit applicants and operators.

   c. Pursuit of appropriate sanctions when inaccuracies in applications are detected, including denial of the permit, assessment of penalties and/or criminal prosecution.

   d. Entry of all information derived from the application and the completeness reviews into the AVS prior to querying the AVS for an issue/deny recommendation following the technical completeness determination.

e. Referral of applicants with outstanding unabated violations, delinquent civil penalties, unpaid AML reclamation fees or unfiled AML reclamation fee reports to the appropriate authority for problem resolution.

f. Once an application is approved, withholding issuance of the permit until a final query of the AVS is completed and a documented review of all other available compliance information confirms that the applicant continues to meet the State program's permit eligibility standards. This review includes verifying the ownership and control information in manual and automated State and Federal databases, including the AVS, and verifying that the application remains complete and accurate.

g. Entry of any new or updated identifying or ownership and control information concerning permit applicants and operators into the AVS within 30 days of application approval, denial or withdrawal.

h. Until coal extraction is completed, annual monitoring of the accuracy of permit application information concerning permittees and operators.

8. Timely rescission of, or imposition of other appropriate remedial measures for, improvidently issued permits.

B. Bonding

Section 509 of SMCRA establishes requirements for performance bonds for surface coal mining and reclamation operations. Bonds are essential to guarantee reclamation if an operator does not or cannot complete the reclamation plan. SMCRA allows various types of performance bonds but requires the amount of the bond to be adequate for a third party to complete the reclamation plan if forfeiture occurs. Liability periods vary, depending chiefly upon the revegetation responsibility period.

Section 519 of SMCRA provides for the release of performance bonds concurrent with the achievement of specified reclamation phases. Specific application, public notice and documentation requirements must be met before partial or full bond release may be granted.

Bond forfeiture is the final means of ensuring that the environment will be protected from the adverse effects of surface coal mining operations. It should supplement, not replace, efforts to compel the operator to complete all reclamation obligations. When necessary, forfeiture should result in timely and complete reclamation.

Evaluation and oversight of permanent program bonding activities shall be based on State program requirements with emphasis on the criteria listed below. OSM Directive TSR-1, the "Handbook for Calculation of Reclamation Bond Amounts", shall be used to evaluate the adequacy of State reclamation cost estimates. In addition, the OSM document entitled "Alternative Bonding Systems: An Analytical Approach and Identified Factors to Consider for Evaluating Alternative Bonding Systems" (November, 1990) shall be used as general guidance when evaluating the solvency of alternative bonding systems, although its provisions are not binding on the States. Also, since SMCRA does not require that initial program sites be bonded, evaluation of State performance with respect to bonds posted for such sites shall be based solely upon the State program requirements applicable to such bonds, not the permanent program bonding requirements.

General evaluation criteria

1. Administration of a bonding program which results in adequate performance guarantees as evidenced by the regulatory authority's:

   a. Maintenance of a system to track the status of all bonds and maintain the security of instruments held by the regulatory authority.

   b. Actions, prior to issuance of a mining permit, to:

      o Compute and require posting of bond amounts adequate for the regulatory authority to complete the reclamation plan if the operator fails to do so.

- o Evaluate the validity, value and restrictions placed on all instruments posted as bond.

- o Evaluate bond terms and conditions to ensure that the period of reclamation liability is fully covered by one or more bonds.

c. Routine evaluation of the viability of any alternative bonding system and initiation of any necessary corrective measures subsequently deemed appropriate.

2. Proper release of bond liability, as evidenced by:

a. Provision of public notice of all bond release applications and proper notification of all interested parties of the regulatory authority's intent to release bond.

b. Evaluation of the degree and success of reclamation on all parcels for which partial or complete bond release has been requested (as documented in State inspection reports).

c. Calculations demonstrating that bond remaining after a proposed partial release will be adequate to complete all remaining reclamation commitments in accordance with program requirements.

d. Documentation that all applicable bond release standards have been attained before approval of any bond release application is granted.

3. Adjustment of bond amounts as necessary to maintain bond adequacy as the area requiring bond coverage increases or decreases or the cost of future reclamation changes, as evidenced by, at a minimum, evaluation of bond adequacy during the processing of applications for significant permit revisions, transfers and renewals and during midterm permit reviews.

4. Timely forfeiture and use of bonds to complete reclamation when efforts to compel the permittee to do so fail, as evidenced by:

a. Adherence to program procedural requirements.

b. Timely collection of forfeited bonds and good faith efforts to pursue and complete any attendant litigation.

c. Prompt initiation and completion of reclamation on forfeited sites in accordance with the approved reclamation plan.

d. When permitted by the approved program, recovery from the permittee of reclamation costs in excess of the amount of bond forfeited.

C. Inspections

Section 517(c) of SMCRA requires that the regulatory authority conduct inspections on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for each surface coal mining and reclamation operation. These inspection frequencies are designed to ensure that surface coal mining operations are conducted so as to protect the environment and ensure that reclamation is conducted contemporaneously with mining. Prompt detection and correction of any violations should minimize their seriousness and duration and hence their environmental impact. This section of SMCRA also requires that OSM conduct such inspections as are necessary to evaluate the administration of approved State programs.

Evaluation and oversight of inspection efforts shall be based on State program requirements and the following criteria:

1. Maintenance of an accurate inspectable units list, including denotation of the permittee, operator, type and size of unit, unit status (active, inactive or abandoned) and changes therein.

2. Inspection, without prior notification to the operator, of all surface coal mining and reclamation operations at the applicable minimum frequency in accordance with program requirements, and, for coal exploration sites and coal extraction operations claiming exemptions, at a frequency adequate to encourage and maintain compliance with program requirements.

3. For each inspection, prompt preparation of accurate, thorough reports, as evidenced by:

    a. Documentation of mine activity status; site conditions; the seriousness and context of any violations observed; enforcement actions taken or modified, vacated or terminated; and progress in abating violations contained in previously issued notices or orders.

    b. For complete inspections, documentation that all records were reviewed and all performance standards and permit requirements evaluated for the entire permit area.

    c. For partial inspections, documentation of which performance standards and permit requirements were evaluated and for what portion of the permit area or period of operation.

    d. If applicable, narratives that exhibit continuity with and cognizance of conditions discussed in previous inspection reports.

4. Maintenance of a comprehensive inspection database adequate to determine if

quantitative State program requirements pertinent to inspections are being met.

5. Timely, procedurally correct investigation of citizen complaints and requests for inspection, and provision of timely, complete responses to complainants.

D. Enforcement

Section 521 of SMCRA contains provisions for the issuance, modification, termination and enforcement of notices of violation, cessation orders, show cause orders and alternative enforcement actions. State regulatory programs must include sanctions no less stringent than those of SMCRA and procedures which are the same as or similar to those of SMCRA and its implementing regulations. Effective implementation of these provisions is necessary to ensure that operations are conducted in a manner protective of the environment and that, whenever necessary, regulatory authorities exercise the full reach of State powers to ensure the protection of the public interest through effective control of surface coal mining operations.

Evaluation and oversight of the enforcement of the regulatory program shall be based on State program requirements and the following criteria:

1. Prompt identification and citation of violations.

2. Issuance, modification and termination of notices of violation, cessation orders, show cause orders and alternative enforcement actions in accordance with program requirements, as evidenced by:

   a. Issuance of notices and orders that prescribe adequate, appropriate and timely remedial measures and abatement periods.

   b. Documentation of the reasons for all modifications, terminations and vacations of enforcement actions, including extensions of abatement periods.

   c. Timely follow-up inspections on all notices and orders, with timely issuance of terminations or failure-to-abate cessation orders as appropriate.

   d. Timely, systematic reviews to identify patterns of violation, with show cause orders issued as appropriate.

   e. Conduct of show cause hearings in accordance with program procedural requirements, with appropriate, reasoned decisions concerning permit suspension or revocation.

   f. When other measures fail to achieve compliance, timely consideration and initiation of appropriate alternative enforcement actions, including assessment of individual civil penalties, permit suspension or revocation, and pursuit of criminal penalties and judicial injunctions.

3. Provision of timely, appropriate responses to OSM ten-day notices, including either documentation of the enforcement or other action taken or a well-reasoned explanation of why good cause exists for not taking action.

E. Civil Penalties

Section 518 of SMCRA sets forth requirements concerning the assessment of civil penalties for violations of the Act or other program or permit provisions. Paragraph (i) of this section requires that the penalty provisions of State programs incorporate penalties no less stringent than those set forth in SMCRA and contain the same or similar procedural requirements relating thereto. Penalty amounts and collection efforts shall be adequate to maintain penalty enforcement values and encourage operators to maintain their operations in compliance on a continuous basis.

Evaluation and oversight of State actions concerning civil penalties shall be based on State program requirements and the following criteria:

1. Timely review of every violation in each enforcement action for assessment of penalties in accordance with program requirements, as evidenced by:

   a. Preparation of explanatory penalty assessment notices and worksheets for each violation addressing the four required factors (history, seriousness, negligence and good faith) and any additional program penalty determination requirements.

   b. Assessment of mandatory penalties, including minimum daily penalties for failure-to-abate cessation orders.

   c. Adherence to program timeframes for provision of penalty assessment notices to the permittee, the holding of assessment conferences and issuance of assessment conference reports.

   d. Documentation of the reasons and calculations for any penalty assessments, adjustments and waivers.

2. Maintenance of the enforcement value of civil penalties, as evidenced by:

   a. Withholding approval of new permit applications filed by applicants with unabated violations or overdue civil penalties.

   b. Reasonable efforts to pursue collection of overdue penalties.

F. Administrative and Judicial Review

Sections 525 and 526 of SMCRA contain provisions for administrative judicial review of actions taken by the regulatory authority. Administrative review is available to a permittee issued a notice or order pursuant to paragraphs (a)(2) and (a)(3) of section 521, to any person having an interest which is or may be adversely affected by such notice or order, and to persons aggrieved by other decisions of the regulatory authority. Regulatory programs also must provide for judicial review of enforcement actions in accordance with Section 526. Administrative and judicial review is necessary to ensure that the rights of all persons are fully protected.

Evaluation and oversight of State administrative and judicial review activities shall be based on State program requirements and the following criteria:

1. Provision of administrative and judicial review in accordance with program procedures, as evidenced by:

   a. Proper notification of permittees and persons with affected interests of their right to apply for review of agency decisions and the procedure to do so.

   b. Refusal to accept administrative appeals concerning civil penalties prior to payment of any proposed penalties into escrow.

   c. Timely scheduling of administrative hearings.

   d. Timely issuance of decisions on administrative appeals.

2. Issuance of administrative hearing decisions which are consistent with program requirements and which fully document the basis for the decision.

3. Appealing or otherwise remedying the effect of administrative and judicial review decisions with adverse programmatic implications, including documentation of why adverse decisions were not appealed.

4. Proper implementation of program provisions governing recovery of litigation expenses and attorneys fees by participants in the administrative and judicial review process.

G. Designation of Lands Unsuitable for Surface Mining

Section 522 of SMCRA requires the regulatory authority to establish a planning process to enable the State to make objective decisions based upon competent, scientifically sound information as to which lands within a State may be unsuitable for all or certain types of mining operations. Upon petition, such lands may be designated as unsuitable for mining operations. The purpose of this process is to ensure that mining operations are not conducted where reclamation is not technologically or economically feasible or where they would conflict with other important values.

Evaluation and oversight of the State's lands unsuitable designation process shall be based on State program requirements and the following criteria:

1. Processing of petitions to designate areas as unsuitable for mining, or to have an existing designation terminated, in accordance with program timeframes and requirements, as evidenced by:

   a. Timely issuance of completeness determinations and decisions on petitions.

   b. Documentation of the basis for completeness determinations or lack of further consideration by the regulatory authority.

   c. Adherence to public participation provisions concerning the processing of petitions.

   d. Preparation of a detailed statement on the potential coal resources of the area, the demand for such resources, and the impact of any designation on the environment, the economy and supply of coal.

   e. Documentation of the basis for the regulatory authority's decisions on complete petitions.

2. Establishment and maintenance of a resource database and inventory system adequate to allow evaluation of whether reclamation is technologically and economically feasible in areas covered by petitions and whether mining operations would be incompatible with State or local land use plans or would adversely affect fragile, historic, natural hazard or renewable resource lands.

H. Blaster Certification

Section 719 of SMCRA requires that each State develop and administer a program for the training, examination and certification of persons who will conduct blasting in surface coal mining operations. These programs are designed to ensure that only persons qualified to conduct blasting operations become certified as blasters. Coupled with the performance standards requiring that only such persons conduct blasting operations at surface coal mines, this program helps to protect society from the adverse effects of the improper use of explosives.

Evaluation and oversight of State blaster certification programs shall be based on State program requirements, with emphasis on the following criteria and characteristics of a successful program:

1. Routine offering of training courses and/or materials to persons seeking certification as blasters.

2. Certification of only qualified persons as blasters, as evidenced by:

   a. Examination of all applicants to test their knowledge and ability concerning the use of explosives.

   b. Review and verification of all applications for certification or recertification to ensure that all experience and other requirements have been met.

3. Suspension or revocation of certification when required.

I. Small Operator Assistance

Section 507(c) of SMCRA requires that the regulatory authority provide assistance to small operators in determining the probable hydrologic consequences of mining and conducting the geologic testing necessary to prepare a permit application.

Evaluation and oversight of a State's small operator assistance program (SOAP) shall be based on the State's adherence to its program requirements, with emphasis on the following criteria:

1. Adequate review and verification of applications for assistance to ensure that only applicants who are eligible for SOAP receive assistance.

2. Monitoring of contracts to ensure that authorized services are provided and that no unauthorized expenditures occur.

3. Monitoring of approved applications to determine when reimbursement is necessary.

4. Maintenance of an acceptable laboratory qualification program.

J. Maintenance of Approved Program

Section 503 of SMCRA authorizes States to assume primary jurisdiction over the regulation of coal exploration and surface coal mining and reclamation operations on non-Federal lands within their borders. To do so, the State must demonstrate its capability to carry out the provisions and meet the purposes of SMCRA. This section and the implementing regulations in Subchapter C of 30 CFR Chapter VII establish specific requirements for State regulatory programs, one of which is that the State program be consistent with SMCRA and the corresponding Federal regulations. Accordingly, when conditions or events indicate that the State program or its manner of implementation no longer meets the requirements of SMCRA or the Federal regulations, the State, either on its own initiative or at the request of OSM, must undertake measures to amend the program to restore its consistency with Federal requirements.

Once section 503 program approval is obtained, section 523 of SMCRA authorizes a State to negotiate a cooperative agreement with OSM to regulate surface coal mining and reclamation operations on Federal lands within the State, as well as any coal exploration on such lands not subject to regulation by the Bureau of Land Management under 43 CFR Part 3400. When approved, the cooperative agreement becomes part of the State's regulatory program. The requirements and procedures for cooperative agreements are set forth in 30 CFR Part 745, which also includes a listing of the authorities reserved by the Secretary.

Evaluation and oversight of State program maintenance activities shall be based on the State's adherence to the following criteria:

1. Provision of prompt notification to OSM of all significant conditions, events and actual or proposed changes (including all actual and proposed program changes) that affect or may affect State program administration, implementation or enforcement, as required by 30 CFR 732.17(b) and 745.12(e).

2. Timely responses to all notifications from OSM that program amendments or cooperative agreement revisions are necessary, as evidenced by submission of proposed amendments (or a letter describing amendments to be proposed in the future) and a reasonable timetable for State adoption and implementation of these amendments.

3. Timely submission of materials to address all outstanding codified amendment requirements and conditions of program approval.

4. Timely promulgation and implementation of program amendments approved by OSM.

K. Program Administration

Section 503(a)(4) of SMCRA requires that State regulatory programs provide for the effective implementation, maintenance and enforcement of a permit system. Section 503(a)(3) requires sufficient administrative and technical personnel and funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of the Act.

Section 705 authorizes the award of grants to the States for program purposes. All grant-funded State actions must conform to the requirements set forth in Circulars A-87, A-102 and A-128 published by the Office of Management and Budget (OMB) and the Department of the Interior's common grants management rule at 43 CFR Part 12.

Section 517(g) prohibits certain employees of the regulatory authority and other State personnel with a function or duty under SMCRA from having any direct or indirect financial interest in any underground or surface coal mining operation. Employees must annually submit a statement of financial interests.

Evaluation and oversight of the administration and management of the regulatory program shall be based on the following criteria:

1. Administration and management of Federal grants in accordance with Treasury Department, Interior Department and OMB requirements, as evidenced by:

   a. Timely drawdowns from funding sources and prompt disbursement of drawdowns.

   b. Proper accounting for all program income and expenditures, using current generally accepted accounting practices.

   c. Timely submission of applications for funds to maintain continuous program support. Also, timely submission of financial, progress and closeout reports to avoid adverse funding actions by the grantor.

   d. Performance of all required audits and implementation of all appropriate recommendations.

   e. Proper procurement, management and disposal of property and services acquired with Federal funds.

2. Establishment and maintenance of data management systems adequate to meet program needs.

3. When State agencies other than the regulatory authority are identified in the OSM-

approved State program submission as having a direct role in implementing SMCRA-related program requirements, effective coordination with these agencies in a manner that minimizes duplication, omissions and delays.

4. Compliance with all Federal conflict of interest provisions including:

   a. Identification of all non-exempt employees.

   b. Identification of and justification for all exempt positions.

   c. Filing of conflict of interest report forms from all non-exempt employees with the proper official.

   d. Identification and resolution of conflicts in a timely manner, including monitoring of compliance with any divestiture orders.

   e. Forwarding proper certification of the filing and review of employee statements to OSM.

V. AMLR Program Elements and Evaluation Criteria

This section lists the AMLR program elements subject to review when overseeing the State's or Tribe's implementation of its approved AMLR plan. It also includes general criteria for use in evaluating each element. The specific standards and criteria used to evaluate State or Tribal performance shall be those set forth in the approved State or Tribal AMLR plan and the OSM "Guidelines for Reclamation Programs and Projects" (45 FR 14810, March 6, 1980), hereinafter referred to as the "AMLR Guidelines", as supplemented by this section.

Both the AMLR and regulatory programs involve grants-in-aid. However, while SMCRA establishes numerous non-grant-related requirements for regulatory programs, it contains very few such requirements for AMLR programs. Hence, there are relatively few program elements and subelements requiring evaluation outside the individual grant application review and management process.

With respect to grants management, this guidance does not duplicate, replace or supersede the grants administration requirements of Directive GMT-10 (the Federal Assistance Manual) and related documents. Rather, it provides the framework within which those aspects of State and Tribal grants management not specific to individual grants; i.e., all grants management activities and functions except the review and approval of specific grant applications and the review and processing of required individual grant audits and reports, shall be performed. Nothing in this guidance shall be used to justify re-review of issues and program requirements that were, or should have been, addressed during the review of individual grant applications and reports, including closeout reports and audits. Furthermore, to the extent applicable and appropriate, oversight of the listed program elements shall rely on the financial, progress, closeout and other grant reports supplied by the State or Tribe. As with State-supplied regulatory data, the Field Office shall evaluate data sources, accuracy and compilation methodologies only to the extent necessary for validation purposes, as discussed in Part II of this appendix.